

ESTTA Tracking number: **ESTTA480627**

Filing date: **06/28/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	C. R. BARD, INC.		
Entity	corporation	Citizenship	New Jersey
Address	730 Central Avenue Murray Hill, NJ 07974 UNITED STATES		

Attorney information	Roberta S. Bren Oblon, Spivak, McClelland, Maier & Neustadt, L.L.P. 1940 Duke Street Alexandria, VA 22314 UNITED STATES tmdocket@oblon.com, rbren@oblon.com, bchapman@oblon.com, ndyson@oblon.com, clisenby@oblon.com Phone:7034133000
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Applicant Information

Application No	85505738	Publication date	05/29/2012
Opposition Filing Date	06/28/2012	Opposition Period Ends	06/28/2012
Applicant	Poiesis Medical, LLC 250 Tequesta Drive, Suite 200 Tequesta, FL 33469 UNITED STATES		

Goods/Services Affected by Opposition


Class 010. All goods and services in the class are opposed, namely: Medical balloon catheters, components of medical balloon catheters sold as an integral part thereof; and medical balloon catheter accessory devices sold in a kit therewith
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3781733	Application Date	02/27/2008
Registration Date	04/27/2010	Foreign Priority Date	NONE
Word Mark	DUET		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 2009/07/13 First Use In Commerce: 2009/07/13 Medical devices and apparatus, namely, catheters, dialysis catheter kits, comprised primarily of catheters, extension legs, introducers, sheath dilator, introducer needles, injection caps, guidewires and tunnelers, and parts and fittings for all of the aforesaid goods

Attachments	77407424#TMSN.jpeg (1 page)(bytes) 85505738-Notice of Opposition.pdf (11 pages)(252138 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/roberta s. bren/cli/
Name	Roberta S. Bren
Date	06/28/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

C. R. BARD, INC.,

Opposer,

V.

POIESIS MEDICAL, LLC,

Applicant.

Opposition No. _____

Appln. Serial No. 85/505738

Mark: DUETTE

NOTICE OF OPPOSITION

In the matter of the application for registration of the mark DUETTE for “medical balloon catheters, components of medical balloon catheters sold as an integral part thereof; and medical balloon catheter accessory devices sold in a kit therewith” in International Class 10, Application Serial No. 85/505738, filed by Poiesis Medical, LLC (“Applicant”) on December 29, 2011, which was published in the *Official Gazette* of the United States Patent and Trademark Office on May 29, 2012.

C. R. BARD, INC. ("Opposer"), is a corporation organized and existing under the laws of the State of New Jersey with a place of business at 730 Central Avenue, Murray Hill, New Jersey 07974, and believes that it would be damaged by registration of the mark shown in Serial No. 85/505738, and hereby opposes same.

As grounds for opposition it is alleged that:

1. Since prior to December 29, 2011, Opposer, through its predecessors and/or related companies has been and is still, engaged in the marketing and sale of medical devices and apparatus under the mark DUET (“Opposer’s Mark”).

2. Opposer is the owner of, and will rely herein upon, Federal Trademark Registration No. 3,781,733 issued April 27, 2010, for the mark DUET for “medical devices and apparatus, namely, catheters, dialysis catheter kits, comprised primarily of catheters, extension legs, introducers, sheath dilator, introducer needles, injection caps, guidewires and tunnelers, and parts and fittings for all of the aforesaid goods” in International Class 10. Printouts from the USPTO’s TARR and Assignment databases for said registration are collectively attached hereto as Opposer’s Exhibit 1 in accordance with Trademark Rule 2.122(d)(1). Said registration is valid and subsisting and is *prima facie* evidence of Opposer’s exclusive right to use Opposer’s Mark in commerce in connection with the goods.

3. Commencing long prior to Applicant’s filing date, Opposer has used, and Opposer is now using, Opposer’s Mark in connection with Opposer’s goods distributed and sold by Opposer in commerce.

4. Opposer will rely on its common law rights in and to its DUET mark used on medical devices and apparatus.

5. On December 29, 2011, Applicant filed an application to register the mark DUETTE for “medical balloon catheters, components of medical balloon catheters sold as an integral part thereof; and medical balloon catheter accessory devices sold in a kit therewith” (“Applicant’s goods”) in International Class 10.

6. Upon information and belief, Applicant did not make any use in interstate commerce of the mark DUETTE on or in connection with Applicant’s goods prior to December 29, 2011.

7. Upon information and belief, Applicant's goods, as identified in the application, under the trademark DUETTE, are or will be distributed in and through the same channels of commerce and/or sold and/or rendered to the same classes of purchasers of Opposer's goods sold under Opposer's DUET Mark.

8. Applicant's Mark DUETTE is the phonetic equivalent of Opposer's Mark DUET.

9. Applicant's Mark DUETTE is confusingly similar to Opposer's Mark DUET.

10. Opposer believes and alleges that consumers are likely to believe that DUETTE identifies goods which originate with Opposer.

11. Applicant's use and registration of the mark DUETTE will enable Applicant to trade upon and utilize the goodwill established by Opposer in Opposer's Mark.

12. Opposer believes and alleges that Applicant's trademark, when applied to Applicant's goods, is likely to cause confusion or mistake or to deceive, and will deceive and mislead the purchasing public into believing that Applicant is licensed or controlled by Opposer or that Applicant is a subsidiary of or in some way related to Opposer, all in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

13. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the DUETTE trademark, as set forth in Applicant's Application Serial No. 85/505738, in that the mark is confusingly similar to Opposer's DUET Mark and will be used in connection with goods identical and/or closely related to the goods offered by Opposer.

14. Upon information and belief, the *bona fides* of Applicant's intent-to-use its DUETTE mark are not apparent from materials of record in the subject application, and Opposer therefore challenges same and leaves Applicant to its proofs with regard to the nature and sufficiency of its intent to sue the DUETTE mark at the time of filing application Serial No. 85/505738, and at any time thereafter.

WHEREFORE, Opposer, C. R. BARD, INC., believes and avers that it is being and will continue to be damaged by registration of the DUETTE trademark as aforesaid, and prays that said Application Serial No. 85/505738 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

POWER OF ATTORNEY

Opposer has appointed Roberta S. Bren, Esq., a member of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., a member of the Bar of the Commonwealth of Virginia, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

Norman F. Oblon
Marvin J. Spivak
Gregory J. Maier
Arthur I. Neustadt
Jeffrey H. Kaufman
Roberta S. Bren
Jonathan Hudis
Jordan S. Weinstein

Kathleen Cooney-Porter*
Beth A. Chapman*
Christopher I. Donahue
Kyoko Imai
David H. Aleskow*
Richard D. Kelly
James D. Hamilton
Eckhard H. Kuesters

Robert T. Pous
Charles L. Gholz
Jean-Paul Lavalleye
Stephen G. Baxter
Richard L. Treanor
Richard L. Chinn

Members of the Bar of Virginia (except as indicated)

*Member of the Bar other than Virginia

Please address all correspondence to Roberta S. Bren, Esq. at OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., 1940 Duke Street, Alexandria, Virginia 22314.

The required filing fee for this Opposition was paid online. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-2014.

Respectfully submitted,

C. R. BARD, INC.

By:

Roberta S. Bren

Roberta S. Bren
OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, L.L.P.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220
e-mail: tmdocket@oblon.com
Counsel for Opposer

Dated: June 28, 2012

RSB/BAC/cli {7010770_1.DOC}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served on counsel for Applicant as identified by the records of the U.S. Patent and Trademark Office this 28th day of June, 2012, by sending same, via First Class mail, postage prepaid, to:

CARL J. SPAGNUOLO
MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410-2910




EXHIBIT 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-06-28 09:50:21 ET

Serial Number: 77407424 Assignment Information

Trademark Document Retrieval

Registration Number: 3781733

Mark

DUET

(words only): DUET

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2010-04-27

Filing Date: 2008-02-27

Transformed into a National Application: No

Registration Date: 2010-04-27

Register: Principal

Law Office Assigned: LAW OFFICE 104

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-03-24

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. C. R. Bard, Inc.

Address:

C. R. Bard, Inc.
730 Central Avenue

Murray Hill, NJ 07974

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New Jersey

GOODS AND/OR SERVICES

International Class: 010

Class Status: Active

Medical devices and apparatus, namely, catheters, dialysis catheter kits, comprised primarily of catheters, extension legs, introducers, sheath dilator, introducer needles, injection caps, guidewires and tunnelers, and parts and fittings for all of the aforesaid goods

Basis: 1(a)

First Use Date: 2009-07-13

First Use in Commerce Date: 2009-07-13

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-04-27 - Registered - Principal Register

2010-03-25 - Notice Of Acceptance Of Statement Of Use E-Mailed

2010-03-24 - Law Office Registration Review Completed

2010-03-24 - Allowed for Registration - Principal Register (SOU accepted)

2010-03-17 - Statement Of Use Processing Complete

2010-02-17 - Use Amendment Filed

2010-03-17 - Case Assigned To Intent To Use Paralegal

2010-02-17 - TEAS Statement of Use Received

2009-06-18 - Extension 1 granted

2009-06-18 - Extension 1 filed

2009-06-18 - TEAS Extension Received

2009-02-17 - NOA Mailed - SOU Required From Applicant
2008-11-25 - Published for opposition
2008-11-05 - Notice of publication
2008-10-22 - Law Office Publication Review Completed
2008-10-21 - Approved For Pub - Principal Register
2008-07-29 - Notification Of Letter Of Suspension E-Mailed
2008-07-29 - LETTER OF SUSPENSION E-MAILED
2008-07-29 - Suspension Letter Written
2008-07-08 - Teas/Email Correspondence Entered
2008-07-08 - Communication received from applicant
2008-07-08 - TEAS Response to Office Action Received
2008-05-16 - Notification Of Non-Final Action E-Mailed
2008-05-16 - Non-final action e-mailed
2008-05-16 - Non-Final Action Written
2008-05-12 - Assigned To Examiner
2008-03-26 - Applicant amendment prior to exam entered
2008-03-26 - Assigned To LIE
2008-03-13 - TEAS Voluntary Amendment Received
2008-03-03 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Roberta S. Bren

Correspondent

ROBERTA S. BREN

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUST

1940 DUKE STREET

ALEXANDRIA, VA 22314-3451

Phone Number: 703-413-3000

Fax Number: 703-413-2220



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Assignments on the Web > Trademark Query

No assignment has been recorded at the USPTO

For Serial Number: 77407424

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.3.1
Web interface last modified: Jan 26, 2012 v.2.3.1

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